

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PENNSYLVANIA**

**Proposed Local Rules
for Complex Chapter 11 Cases**

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Local Rule 1002-2

COMPLEX CHAPTER 11 CASES: GENERAL

(a) *Complex Chapter 11 Case.* A complex chapter 11 case is a chapter 11 case in which the total debt in the case is \$10 million or more and either

1. the debtor's debt or equity securities are publicly traded, or
2. there are 100 or more parties in interest in the case.

(b) *Statement of Qualification for Complex Chapter 11 Case Status: Administration.* A chapter 11 debtor may file with the petition a Statement of Qualification for Complex Chapter 11 Case Status, substantially in the form of L.B.F. 1002-2A, that sets forth the reasons why the debtor's chapter 11 case qualifies under subdivision (a) as a complex chapter 11 case. If a Statement of Qualification is filed with the petition, the case shall be administered as a complex chapter 11 case, unless the court orders otherwise on the court's own motion, or in response to an objection made under subdivision (e), or a later motion. A Motion for the Scheduling of an Expedited Hearing may be combined with the Statement of Qualification.

(c) *Expedited Hearing.* If the debtor, within 10 days of filing the chapter 11 case that is being administered as a complex chapter 11 case, files a motion for the Scheduling of an Expedited Hearing, the judge who is assigned the chapter 11 case shall use the judge's best efforts to schedule an expedited hearing as soon as appropriate under the circumstances of the case but not more than three (3) business days after the filing of the Motion for the Scheduling of an Expedited Hearing, unless the debtor requests a later date. If the assigned judge is unavailable, the Emergency Judge serving pursuant to L.B.R. 5001-1(a) shall use the judge's best efforts to arrange for an expedited hearing within the three (3) day period. The courtroom deputy shall promptly inform the debtor of the date and time of the expedited hearing and what motions and applications will be heard (the Expedited Hearing Agenda).

(d) *Notice of Expedited Hearing: Service of Motions and Applications.*

(1) Service. The debtor shall serve a Notice of Expedited Hearing substantially in the form of L.B.F. 1002-2B, copies of the motions and applications that will be heard at the Expedited Hearing, and the proposed order that accompanies each motion and application on the following parties, or, if represented, their counsel:

- (i) the United States trustee;

- (ii) any prepetition committee of unsecured creditors;
- (iii) any official committee and the twenty (20) largest unsecured creditors of the debtor;
- (iv) the Internal Revenue Service and the City of Philadelphia at the address shown on the list maintained by the Clerk in accord with F.R. Bank. P. 5003 (c); and
- (v) any entity whose interest would be directly, materially, and adversely affected if the relief requested in the motion were granted and whose interests are not adequately represented by persons on whom service is otherwise required.

On the day the debtor is notified by the court of the date of the Expedited Hearing, the debtor, if feasible, shall make service under this subdivision. If service is not made on the day the debtor is notified by the court of the date of the Expedited Hearing, service shall be made no later than the next day.

(2) Supplemental Notice. On the day the debtor is notified of the date of the Expedited Hearing, the debtor shall give notice by telephone, fax, or email of the date, time, and place of the Expedited Hearing and the Expedited Hearing Agenda to any of the parties required to be served under subdivision (d)(1) who will not be served until the next day.

(3) Certificate of Service and Notice. The debtor shall file a certificate of service and notice prepared as required by L.B.R. 9014-4 before the Expedited Hearing or with the court at the Expedited Hearing.

(4) Adequacy of Service or Notice. If the court determines that for any motion or application on the Expedited Hearing Agenda the service or notice completed in advance of the Expedited Hearing is inadequate, the court may deny some or all of the relief requested or continue the hearing.

(e) *Objection to Statement of Qualification: Response to Motion or Application.* L.B.R. 9013-1(e) and L.B.R. 9014-3(i), which require that any written objection to an application or a written answer or objection to a motion be filed within a specified period, do not apply to an application or motion that is scheduled to be heard at the Expedited Hearing. An objection to the debtor's Statement of Qualification and an objection or answer to an application or motion scheduled to be heard at an Expedited Hearing may be filed before the Expedited Hearing or with the court at the Expedited Hearing or made orally at the Expedited Hearing.

(f) *Advance Notice to and Service on the United States Trustee.*

(1) Notice to United States Trustee. Counsel for the debtor, with or without naming the debtor or including information that identifies the debtor, shall, if feasible, advise the United States Trustee

of a debtor's intent to file a complex chapter 11 case and of the motions and applications the debtor intends to request be heard at an Expedited Hearing. Counsel shall give this notice to the United States Trustee as soon as practical, which ordinarily should be at least 48 hours before the chapter 11 case is filed.

(2) Service on United States Trustee. The debtor shall hand deliver, if feasible, the applications and motions (in substantially final form) that the debtor intends to request be heard at an Expedited Hearing to the United States Trustee at least 24 hours before the filing of the chapter 11 case.

(3) Certificate of Service and Notice. The debtor shall file a certificate of service and notice prepared as required by L.B.R. 9014-4 before the Expedited Hearing or with the court at the Expedited Hearing.

(g) *Notice of Entry of Orders.* On the day the debtor is notified of the entry of the order disposing of a matter heard at the Expedited Hearing, the debtor, if feasible, shall serve a copy of the order on the parties required to be served under subdivision (d)(1). If service is not made on the day the debtor is notified of entry of the order, service shall be made no later than the next day. .

Committee's Explanatory Note

Subdivision (a) identifies the criteria to be used in determining whether a chapter 11 case qualifies for complex chapter 11 case status. A court on the motion of a debtor may order that even though chapter 11 case is not a complex chapter 11 case under subdivision (a) the case shall be administered as a complex chapter 11 case.

Subdivisions (b) and (c). Time is important at the beginning of a complex chapter 11 case. Preservation of the business and the likelihood of a successful reorganization may depend, in part, on the debtor being able to have certain matters heard and determined by the court shortly after the complex chapter 11 case is filed. Under the ordinary practice, motions are not heard very quickly. L.B.R. 9014-3(h) allows 15 days for the filing of an answer to a motion. Thus a hearing on a motion is after the 15 day period expires. Moreover, L.B.R. 5070-1(a) provides that a hearing on a motion will be scheduled on the presiding judge's next available list.

A debtor may attempt to obtain an earlier hearing date by filing a motion for expedited consideration under L.B.R. 5070-1(f) that demonstrates with particularity the reasons supporting the need for expedited consideration.[@] How long it will take for the court to rule on the motion and, if the motion is granted, when the hearing will be held are uncertain. In addition, it is necessary for the court in each case to enter an order governing service, notice, and other procedural matters that must be addressed when a motion is heard on an expedited basis.

The criteria in subdivision (a) are designed to identify as a complex chapter 11 cases those cases where there is a high probability that there is ample reason why expedited consideration is needed and, therefore, appropriate. Subdivisions (b) and (c) create a simplified process for obtaining an expedited

hearing at the very beginning of a complex chapter 11 case and other subdivisions of this rule address service, notice, and other procedural matters.

L.B.R. 5070-1(f) permits the filing of a motion for the Scheduling of an Expedited Hearing at any time. Subdivision (c) provides that if the debtor in a case being administered as a complex chapter 11 case files a motion for the Scheduling of an Expedited Hearing within 10 days of the filing of the chapter 11 case, the court will, if possible, schedule an expedited hearing within three business days of the filing of the motion.

Under subdivision (b), a case will be administered as a complex chapter 11 case if the debtor files with the petition a Statement of Qualification for Complex Chapter 11 Case Status. The court, however, may on its own motion in an appropriate case determine that even though a Statement of Qualification has been filed, the case should not be administered as a complex chapter 11 case. Moreover, subdivision (e) specifically authorizes a party interest to orally object to the debtor's Statement of Qualification at the Expedited Hearing or to file an objection with the clerk before the Expedited Hearing or with the court at the Expedited Hearing. A Motion to Terminate Complex Chapter 11 Case Status may be filed at any time after the Expedited Hearing.

Subdivision (d) imposes additional service obligations on a debtor who obtains an expedited hearing under this rule.

Subdivision (d)(1) requires service on the same entities that are required to be served under L.B.R. 9014-3(f), which governs general motion practice, and also follows L.B.R. 9014-3(f) by requiring that service be completed, if feasible, on the day the court informs the debtor of the Expedited Hearing date or, at the latest, the next day. If service cannot be completed on the day the court informs the debtor of the date the hearing, the debtor is required by subdivision (d)(2) to give supplemental notice of both the hearing date and the hearing agenda by telephone, fax, or e-mail. The supplemental notice must be given on the day the court informs the debtor of the Expedited Hearing date. F.R.B.P. 9014(b) and 7004 and F.R.Civ.P. 4 specify how service of a motion is made. Because of the short time available, the debtor will either have to deliver the motion to the parties that must be served or use one of the overnight carriers to complete service.

Even if the debtor completes the service required by this rule, the court may find that the service and notice required by this rule are not adequate for a particular motion or application, or for a particular party. In addition, the debtor may fail to complete service and notice as required by this rule. Subdivision (d)(4) takes account of these and other possibilities by stating that a motion or application may have to be denied in whole or in part or a motion or application may have to be continued to a later hearing date if the service or notice is inadequate.

Subdivision (e) specifically makes L.B.R. 9013-1(e) and L.B.R. 9014-3(h), which require the filing of a written response to an application or a motion, inapplicable to a response to an application or a motion that is scheduled to be heard at an Expedited Hearing. Because of the short time period between service of the notice of the Expedited Hearing and the Expedited Hearing, the subdivision authorizes an oral response at the Expedited Hearing as well as the filing of a written response before the Expedited Hearing or with the

Subdivision (f)(1) requires counsel for a debtor to notify the United States Trustee before the chapter 11 case is filed that a debtor will be filing a complex chapter 11 case. Copies of the substantive motions and applications that the debtor will request be heard at the expedited hearing are to be delivered to the United States Trustee at least 24 hours before the complex chapter 11 case is filed.

LOCAL BANKRUPTCY FORM 1002-2A

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATEMENT OF QUALIFICATION AS COMPLEX CHAPTER 11 CASE

_____ the debtor's debt securities are publicly traded

_____ the debtor's equity securities are publicly traded, and/or

_____ there are 100 or more parties in interest in the case.

Signed: _____
Attorney for the Debtor
[Attorney's name], Esq.
[Firm Name].....

[Address].....
[Phone No].....
[Fax No.].....

The Statement may also be signed by a chapter 11 individual debtor, or by an authorized person if the chapter 11 debtor is a corporation, limited liability company, partnership, or other business entity. The form should be adapted to properly reflect the status of the person signing the Statement.

LOCAL BANKRUPTCY FORM 1002-2B

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re : Chapter

Debtor : Bankruptcy No.

* * * * *

NOTICE OF DATE OF EXPEDITED HEARING, MATTERS THAT WILL BE HEARD AT THE
EXPEDITED HEARING, AND HOW TO RESPOND

(*Name of debtor*) has filed a chapter 11 case, a Statement of Qualification for Complex Chapter 11 Case Status, and a motion for Scheduling an Expedited Hearing.

The chapter 11 case is being administered under L.B.R. 1001-(2) as a Complex Chapter 11 case.

An Expedited Hearing is scheduled to be held before the Honorable (name of bankruptcy judge) on XX/XX/XX, at _____ in Courtroom _____, United States Bankruptcy Court, (address of Bankruptcy Court). At the Expedited Hearing, the court will consider the Debtor's motion(s) and application(s) that are listed below:

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult an attorney.)

1. If you do not want the court to grant the relief sought in a motion or an application, or if you to object to the Debtor's chapter 11 case being administered as a Complex Chapter 11 case, or if you want the court to consider your views on a motion or an application, then you or your attorney must

(a) file an answer or objection explaining your position at (*address of bankruptcy clerk's office*) before the start of the Expedited Hearing on XX/XX/XX; or

(b) come to the Expedited Hearing on XX/XX/XX and either

- (i) file an answer or objection explaining your position by delivering it to the court, or
- (ii) orally present an answer or objection explaining your position.

If you mail your answer to the bankruptcy clerk's office for filing, you must mail it early enough so that it will be received on or before the start of the Expedited Hearing on XX/XX/XX.

2. If you file an answer or objection with the bankruptcy clerk's office or with the court at the Expedited Hearing, you must also provide a copy of your answer or objection to the Debtor's attorney. You may have it delivered by mail or other means of delivery to the Debtor's attorney at the address shown below before the date of the Expedited Hearing or you may deliver it to the Debtor's attorney at the Expedited hearing .

{ Attorney's name }
[Firm name]
[Address]
[Phone No.].....
[Fax No.].....

[If applicable, name and address of others to be served.]

3. If you or your attorney do not take the steps described in paragraphs 1 and 2 above, the court may enter an order granting the relief requested in a motion or an application.

4. Copies of motion(s) and applications that will be heard at the Expedited Hearing are enclosed.[or will be delivered separately].

5. Unless the court orders otherwise, the hearing will be an evidentiary hearing at which

witnesses may testify with respect to disputed material factual issues in the manner directed by Fed. R. Bankr. P. 9014(d).

Date.....

Local Rule 1002-3

COMPLEX CHAPTER 11 CASES: SELECTION OF MOTIONS AND APPLICATIONS FOR EXPEDITED HEARING

(a) Criteria. A motion or application will be scheduled for an Expedited Hearing held pursuant to L.B.R. 1002-2 only if it appears that an expedited ruling will either (i) materially enhance the possibility that the debtor will be able to continue to operate the business, (ii) contribute to the preservation of the assets of the estate, or (iii) facilitate the orderly and efficient administration of the case.

(b) Typical Motions. The following are examples of motions or applications that ordinarily will be scheduled for an Expedited Hearing if the debtor requests:

Administrative Matters

1. Motion for Joint Administration of Related Chapter 11 Cases;
2. Motion for Approval of Debtor Serving Notice of the Section 341 Creditors' Meeting;
3. Motion for Approval of Notice Procedures;
4. Motion for Approval of Claims Agent or Notice Agent;
5. Motion under L.B.R. 2090-1 for Admission of an Attorney *Pro Hac Vice*; and
6. Motion for Order Scheduling Omnibus Hearing Dates.

Financing

7. Motion for Interim Authorization of Use of Cash Collateral;
8. Motion for Interim Authorization of Post-Petition Borrowing;
9. Motion for Approval of Debtor's Continuing Use of Existing Bank Accounts, Business Forms, and Cash Management System, or Related Relief; and
10. Motion for Approval of Interim Modified Section 345 Investment Procedures and for Scheduling of Hearing on Permanent Modified Section 345 Investment Procedures;

Operation of the Debtor's Business

11. Motion for Approval to Pay Pre-Petition Employee Wage Claims, Benefits, and Related Taxes to all Employees, Independent Contractors, and Tax Authorities;
12. Motion for Approval to Pay Pre-Petition Trust Fund and/or Priority Taxes;
13. Motion for Approval to Pay or Honor Obligations to Customers;
14. Motion for Approval to Pay Other Pre-Petition Claims;
15. Motion for Order Authorizing and Directing Banks to Honor Certain Pre-Petition Checks; and
16. Motion for Interim Relief and for Scheduling of Hearing on Determination of Adequate Assurance to Utilities.

(c) Other Motions. A debtor's motion for an Expedited Hearing may request that motions or applications that are not listed in subdivision (b) be heard at the Expedited Hearing.

Committee's Explanatory Note

Subdivision (a) sets forth three criteria for determining whether a motion or application should be scheduled to be heard at an Expedited Hearing.

Subdivision (b) lists motions that will ordinarily be scheduled for an Expedited Hearing because these motions will satisfy one or more of the subdivision (a) criteria. It is important to note that a motion seeking the court's approval of the use of cash collateral, post-petition borrowing, or adoption of modified

Section 345 investment procedures will be scheduled for the expedited hearing only if the motion requests interim authorization of the proposed relief. The debtor may combine in one motion a request for interim authorization and a request for final relief, for example, interim authorization to borrow under a post-petition line of credit and a request for final approval of the line of credit.

Subdivision (c) makes it clear that even if a motion or application is not listed in subdivision (b), the debtor may request that the motion or application be scheduled to be heard at the expedited hearing.

Local Rule 1002-4

COMPLEX CHAPTER 11 CASES: INTERIM CASH COLLATERAL AND BORROWING MOTIONS

A motion for Interim Authorization to Use Cash Collateral or Interim Authorization of Post-Petition Borrowing shall have a separate section at the beginning of the motion that lists in bold face type any of the following terms that are included in either the proposed order that accompanies the motion or in the loan agreement that will be entered into by the debtor if the borrowing motion is granted:

1. Cross-collateralization clauses that provide that pre-petition debt is secured by post-petition assets that the secured party would not otherwise have a security interest in by virtue of its pre-petition security agreement.
2. Provisions or findings of fact which relate to the validity, perfection, or amount of the secured party's lien or the amount of outstanding debt and are binding on parties in interest, other than the debtor or signatories to any agreement for which court approval is requested.
3. Provisions or findings of fact which relate to the relative priorities of a secured party's lien and the liens held by persons who are not parties to the loan transaction, for example, an order providing that the secured party's lien is a first priority lie, and are binding on parties in interest, other than the debtor or signatories to any agreement for which court approval is requested.
4. Waivers of rights under Section 506(c).
5. Provisions that operate, as a practical matter, to divest the debtor in possession of any discretion in the formulation of a plan or administration of the estate or limit the debtor's right of access to the court to seek relief under the Code or other applicable law.
6. Releases of liability for the creditor's alleged pre-petition torts or breaches of contract.

7. Waivers of avoidance actions arising under the Code or other applicable law.
8. Automatic termination or modification of the Section 362 stay on default, conversion to chapter 7, or appointment of a trustee.
9. Waivers of the procedural requirements of applicable non-bankruptcy law governing foreclosure.
10. Adequate protection provisions that create liens or claims for relief arising under Sections 506(c), 544, 545, 547, 548, and 549.
11. Waivers of the debtor's right to request bankruptcy court approval under Section 363(c)(2)(B) of the debtor's use of cash collateral without the secured party's consent that are triggered by default or expiration of a prior cash collateral order.
12. Findings of fact on matters extraneous to the court's approval of the motion. (For example, if the debtor seeks to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit is appropriate but a finding, @binding on all parties, that the lender acted in good faith in declaring the pre-petition loan in default is not appropriate.)
13. Granting of a lien to a post-petition lender that is given priority over a pre-petition lien on the same collateral.

Committee's Explanatory Note

Motions for interim authorization to use cash collateral and to borrow post-petition present particularly sensitive issues. This rule requires the debtor to disclose at the beginning of these motions whether any of the terms listed in the rule are included in the proposed order or loan agreement. This calls the attention of the court and the parties to the particularly noteworthy aspects of the proposed order or loan agreement.

RULE 1002-5

COMPLEX CHAPTER 11 CASES: AUTOMATIC RECONSIDERATION

(a) *Automatic Reconsideration.* The court shall reconsider an order entered on a matter heard at an Expedited Hearing held pursuant to L.B.R. 1002-2, other than an order entered pursuant to 11 U.S.C. Sections 363 and 364 relating to the use of cash collateral or approval of post-petition financing, if a timely motion for reconsideration of the order is filed. A motion for reconsideration is timely filed if it is filed within thirty (30) days of entry of the order, or, if F.R.Civ. P. 59 (e) applies to the motion, the motion is filed within the time prescribed by Rule 59(e).

(b) *Expedited Schedule*. If requested by the movant for reconsideration, the reconsideration shall be on an expedited basis

(c) *Burden of Proof*. The party who had the burden of proof on the motion or application that resulted in the entry of the order being reconsidered also has the burden of proof on reconsideration of the order.

Committee's Explanatory Note

Subdivision (a) provides that if a timely motion for reconsideration of an order disposing of a matter heard at the expedited hearing is filed, the court will automatically reconsider the motion. A motion for reconsideration is timely filed under subdivision (a) if it is filed within 30 days of entry of the order, unless the order is subject to F.R.Civ. P. 59 which requires that the motion be filed within 10 days. Under F.R.B.P. 9023 , F.R.Civ. P. 59, which governs new trials and motions to alter or amend a judgment, applies to appealable orders that are entered in cases under the Code. See F.R.B.P. 9001 (7).

Once the motion for reconsideration is filed, the movant must obtain a date for the reconsideration hearing and then make service and otherwise comply with L.B.R. 9014-3.

While scheduling an expedited hearing almost immediately after a complex chapter 11 case is filed increases the likelihood the debtor will be able to preserve the business and confirm a plan of reorganization, at that very early stage of the case creditors and other parties in interest may not yet understand the debtor's financial condition or business prospects or be able to evaluate the legal issues raised by the matters heard at the Expedited Hearing. In addition, some parties may find it difficult for a variety of reasons to fully participate at the Expedited Hearing. Automatic reconsideration of orders entered on the matters heard at the Expedited Hearing, as provided by this rule, assures parties in interest that there will no procedural impediments to their presenting to the court their reasons why the order being reconsidered should not have been entered.

Subdivision (b). If the movant requests, a motion for reconsideration will be scheduled on an expedited basis

Subdivision (c). Whoever had the burden of proof when a motion or application was originally heard, also has the burden of proof on the motion for reconsideration.

Local Rule 2016-4

Payment on Account to Professionals in Complex Chapter 11 Case.

(a) *Applicability*. This rule applies to any case being administered as a complex chapter 11 case. An application under this rule for payment on account is governed by this rule and L.B.R. 9013-1(a) and

(b).

(b) *Payment on Account*. Unless otherwise ordered by the court and subject to subdivision (c), a professional employed under Sections 327 or 1103, who has rendered services for a period of at least one month but not yet filed an application for compensation and reimbursement of expenses under L.B.R. 2016-3 covering that period, may file an application for payment on account toward the compensation and reimbursement that will later be requested in an application filed in accordance with L.B.R. 2016-3.

(c) *Limitation on Period Covered by Application*. A professional who has rendered services for a period but not yet filed an application for compensation under L.B.R. 2016-3 covering that period may only request payment on account for a total of four months. Once an application under L.B.R. 2016-3 is filed covering a period, a professional may resume filing applications for payment on account for up to a total of four months for services rendered after the period covered by the L.B.R. 2016-3 application.

(d) *Content of Application*. An application for payment on account shall include (1) a list by name of each professional or paraprofessional, their billing rate, number of hours billed, and the total amount requested for the period; (2) a general description of the service rendered during the period by the applicant in the categories of service listed in L.B.R. 2016-3 (c), and (3) a list of the type and amount of expenses for which reimbursement is requested.

(e) *Service of Application and Notice*. On the day an application for payment on account is filed, the applicant shall serve

(1) a copy of the application, and

(2) a notice of the filing of the application and the requirement that any objection to the application must be filed and served on the applicant, or if the applicant is represented, counsel for the applicant, within twenty (20) days of the date on which the application is filed,

on the following, or, if represented, their counsel of record,

(i) the debtor;

(ii) the United States trustee;

(iii) any trustee;

(iv) any official committee or, if no committee has been appointed in a chapter 11 case, the twenty (20) largest unsecured creditors of the debtor; and

(v) those on the Clerk's Service List.

(f) *Form of Objection.* An objection to an application for payment on account shall identify the objector, state the basis of the objection, and identify the amount of the requested payment that is objected to and the amount that is not objected to.

(g) *Certification Relating to Objection.* After the expiration of the twenty (20) day period to file an objection, the applicant shall file a certification, prepared as required by L.B.R. 9014-4, of notice and service which also states whether any timely objection has been filed and, if a timely objection has been filed, the specific amount of the total payment requested that is objected to. The applicant shall serve a copy of the certification on the debtor.

(h) *Payment on Account.* If the debtor receives a certification under subdivision (g) that indicates that no timely objection has been filed or that there was no objection to a portion of the payment requested in the application, the debtor shall pay the professional 80% of the fees and 100% of the expenses described in the application that are not objected to.

(i) *Hearing Date on Objection and Notice of Hearing.* An applicant, but not an objector, may under L.B.R. 5070-1(a) obtain a hearing date for consideration of objections that have been timely filed to one or more applications for payment on account. The clerk shall give notice of the hearing to the objector, those that must be served under subdivision (e), and any other entity the court directs.

(j) *No Binding Effect.* The right of a professional or a party in interest to request, object to, or otherwise dispute any issue relating to an application for compensation and reimbursement filed under L.B.R. 2016-3 is not affected by the fact the party in interest did not file any objection to the application for payment on account, the professional received payment on account, or that an application for payment on account was either objected to or denied by the court.

(k) *Return of Payment on Account.* If the amount paid on account to a professional exceeds the amount of final compensation awarded by the court, the professional shall repay the excess amount to the debtor within ten (10) days of entry of the order allowing final compensation, unless the court fixes another date for the repayment.

(l) *Content of Application for Compensation or Reimbursement of Expenses.* An application for compensation and reimbursement of expenses that covers a period for which a professional has received payment on account pursuant to this rule shall, in addition to conforming to L.B.R. 2016-3, include the following:

(1) a list of the applications for payment on account that were filed during the period showing for each application whether (i) any objections were filed, (ii) a hearing on the objection has been held or scheduled to be held, and (iii) the amount, if any, paid on account;

(2) a tabulation that shows the difference, if any, between the amounts requested in the applications for payment on account and the application for compensation and

reimbursement filed under L.B.R. 2016-3; and

(3) an explanation of the differences in the amounts requested.

Committee's Explanatory Note

Subdivision (a). This rule applies to cases being administered as complex chapter 11 cases under L.B.R. 1002-2. In general, the rule permits professionals to submit monthly applications for payment of fees on account. If there is no objection, the debtor pays 80% of the fees and 100% of the expenses. If a portion of the fee is objected to, only 80% of the unobjected to portion may be paid.

A maximum of four months in fees may be requested by applications for payment on account. Once a long form fee application under L.B.R.2016-3 is filed that covers the period for which applications for payment on account have been filed, the professional may resume requesting payment on account.

Subdivision (b) establishes one month as the shortest period that may be covered by an application for payment on account.

Subdivision (c) establishes four months as the maximum period that may be covered by applications for payment on account. The four month period begins anew once the professional files a fee application under L.B.R. 2016-3.

Subdivision (d) requires less detail concerning what matters each professional worked on than is required under L.B.R. 2016-3. The information that is required by this rule will be ample for parties to determine whether an objection should be filed. Under subdivision (j), a failure to object to an application for payment on account does not preclude a party from objecting to a fee application under L.B.R. 2016-3.

Subdivision (e) requires service of an application for payment on account on the same persons who have to be served with fee applications under L.B.R. 2016-1(a). There is no requirement that a separate notice of the filing of the application on account be given to those on this matrix list of creditors. See L.B.R. 2016-1(b).

Subdivision (f) requires an objection to specifically state how much of the requested fee is objected to.

Subdivision (g) is similar to L.B.R. 2016-1(c).

Subdivision (h) requires the debtor on receipt of a certificate from the applicant to pay 80% of the unobjected to fees and 100% of the unobjected to expenses. No obligation to pay on account arises if the debtor or another party objects to the application. If, when the debtor receives the certification, the debtor has a basis for not paying the professional, the debtor may file a motion seeking authority to withhold payment.

Subdivision (i). The filing of an objection to an application for payment on account automatically prevents payment of the amount objected to. Thus, there is no reason to hold a hearing on the objection unless the applicant disputes the objection. Only the applicant may have a hearing on an objection scheduled.

Subdivision (j) provides that the rights of all parties are preserved and may be asserted when a fee application under L.B.R. 2011-3 is filed.

Subdivision (k) states the obligation of a professional to return fees paid on account when the final fee allowance is less than the amount paid on account.

Subdivision (l) requires an applicant to include in a L.B.R. 2016-3 fee application information relating to amounts paid on account.